IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

Crl.Rev.Pet.No.631 of 2000

CRA.292/1996 of SESSIONS COURT, THALASSERY
CC.681/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR
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REVN. PETITIONER/APPELLANT/ACCUSED:

P.KUNHIRAMAN, S/O. RAMAN, AGED 59 YEARS,
DRIVER, EZHOM AMSOM, CHENGAL DESOM,
TALIPARAMBA, KANNUR DISTRICT.

BY ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN
SRI.A.S.BENOY

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY S.H.O. IRIKKOOR POLICE
STATION, KANNUR AND REP. BY THE STATE PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI. C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.Rev.Pet.No.631/00

Order on Crl.M.P.No.3518/00 in Crl.R.P.No.631/00

Dismissed.

03.04.07 Sd/- K. HEMA, JUDGE.

// True Copy //

P.A. to Judge.

smp

K. HEMA, J.

CRL. R.P. No.631 OF 2000

Dated this the 3rd day of April, 2007.

O R D E R

Revision petitioner was convicted and sentenced to undergo simple imprisonment for three months each under Sections 279 and 337 of Indian Penal Code. He was acquitted of offence under Section 338 IPC. In appeal, the conviction and sentence were confirmed. Hence, this revision.

2. According to prosecution, on 13.04.1993 at about 10 a.m the bus was driven by revision petitioner along public road from east to west while autorickshaw driven by PW8 came from the opposite direction. Since accused was driving the vehicle in a rash and negligent manner, it hit against autorickshaw on the rear side and injuries were sustained by passengers in the autorickshaw including PWs 1 and 2. PW8 also sustained minor injuries.

3. Prosecution examined PWs 1 to 12 and marked Exhibits P1 to P5. Accused did not adduce any evidence. He contended that accident occurred not due to the rashness and negligence on the part of bus driver. But, autorickshaw carrying more than the permissible number

of passengers was driven by its driver in a negligent manner and when the bus and autorickshaw were passing a chair protruding out of autorickshaw which was held at the back seat by one of the passengers hit against the bus, when the autorickshaw was negligently swerved on seeing the bus.

4. On an analysis of the evidence on record, trial court found that evidence of PWs 1 and 2 who were passengers in the autorickshaw is supported by evidence of other eye witnesses examined in this case, namely PWs 4, 7 and 8. The trial court found no reason to discard the testimony of these witnesses. It was also held that evidence of PWs 3 and 4 supported the prosecution case to a certain extent. The evidence of PW8 was also believed to hold that accused was driving the vehicle at a very high speed and the accident occurred due to rash and negligent driving of vehicle by accused.

5. The lower appellate court found that, trial court considered the oral evidence in the correct perspective and there is no reason to interfere with the conviction. Lower appellate court referred to certain portions in the evidence given by various witnesses, recitals in Ext.P2 scene mahazar etc. but it has not discussed anything regarding the alleged rashness and negligence attributed to the driving of vehicle by accused. No portion from the evidence of any of the witnesses which reveal the rashness or negligence on the part of accused is seen

discussed except by saying that trial court considered the oral evidence in the correct perspective.

6. Lower appellate court ought to have considered all relevant facts before confirming the conviction. Though lower appellate court observed that the only question relevant for determination is whether revision petitioner was rash or negligent at the time of accident, evidence of none of the witnesses who spoke about such rashness and negligence was specifically considered by it. Having held that trial court considered the evidence in the right perspective, I shall look into the judgment of the trial court as well.

7. On going through the evidence, records and judgments of both the courts below, I find that serious factual errors are committed by both the courts below even in referring to the evidence of each of the witnesses. Trial court found that nothing is brought out from the cross-examination of PW1 to discredit his testimony except a suggestion made regarding portion of the chair protruding from autorickshaw. The trial court also found that there is absolutely no reason to disbelieve the testimony of PW2.

8. It was also held that the version given by PW8 is in support of the prosecution case and that the defence version is not supported by the evidence given by various witnesses. Trial court as well as lower appellate court referred to the damage caused on the vehicle and held

that the nature of damage supports the prosecution case and negatives or improbabilize the defence case.

9. The above findings cannot be upheld since evidence of material witnesses is contrary to prosecution case especially with respect to the scene of occurrence. The definite case of prosecution is that the incident occurred in the middle of the road. The evidence of PW11 Head Constable who prepared the scene mahazar shows that the accident occurred right in the middle of the road. But, PWs 1 and 2 gave evidence that accident occurred not in the middle but the bus came on the wrong side and hit against the autorickshaw.

10. PW1 specifically stated that the accident occurred on the left side of the tarred road. PW2 also denied the suggestion that the accident occurred in the middle of the road. He specifically stated that the autorickshaw was on the extreme left side of the road. This itself contradicts the prosecution case. That apart it is doubtful whether PWs 1 and 2 had seen the manner in which the bus was driven though they spoke that the bus was driven at a high speed.

11. PW1 in the cross-examination admitted that he came to know about the incident only when his nose hit against the iron rod. This itself indicates that he came to know about the incident after the hit. The evidence discloses that the passengers in the autorickshaw were friends and they were talking to each other during the journey.

PW2 also deposed that he came to know about the accident when the bus hit. This also would indicate that these persons knew about the incident after the hit and did not notice the manner in which the bus came to the spot. None of these facts were considered by the courts below. At any rate, the fact that they gave evidence regarding the place of occurrence contrary to the prosecution case itself ought to have cautioned the court to scrutinize the evidence with greater care and caution.

12. It is true that PWs 1 and 2 denied the suggestion that there was a chair protruding out and that it was held by the person who was sitting on the right extreme of the autorickshaw at the back side. It appears that passengers in the autorickshaw tried to suppress this fact as indicated from the evidence of PW4. The denial is easy. But, the evidence of PW4 will reveal that there was a steel chair in the autorickshaw. PW4 is not a hostile witness. He has not been declared as hostile. It is clear from his evidence that he had gone to the spot immediately after the occurrence on hearing the sound. He had stated that there was a steel chair in the autorickshaw.

13. The evidence given by persons who were travelling in the autorickshaw that there was no steel chair has to be analysed in the light of the version given by PW4 regarding presence of a chair in the autorickshaw.

14. PW3 stated that he had gone to the spot on hearing the sound. He was treated as hostile by the prosecution. But, nothing is brought out from his evidence to show that he was giving a contradictory version with respect to the incident. Both the courts proceeded as if PW3 is an eye witness to the occurrence who corroborated the version given by other witnesses, though there is absolutely nothing in his evidence to show that he was an eye witness or that he had given a statement to the police as an eye witness.

15. The evidence of PW4 will not show that he had seen the incident. Still the evidence of PW4 has been treated as an eye witness to the occurrence to hold that he corroborated the version given by eye witnesses. The evidence of PW6 also assumes relevance. He had deposed in tune with defence version. His case is that he was standing on the front step of the bus and the bus was about to stop in the bus stop ,while the autorickshaw came from opposite side. On seeing the bus, autorickshaw driver suddenly swerved the vehicle which was coming in high speed and the chair in the autorickshaw hit on the front side of the bus.

16. Though PW6 stated that the autorickshaw driver was negligent in driving and permission was sought for declaring the witness as hostile, nothing is brought out from his evidence to show that the version given by him regarding swerving of autorickshaw,

hitting of the cycle on the bus etc. are new version given at the time of evidence. It has not been brought out from evidence that he was giving evidence regarding such manner in which incident occurred for the first time in court. Therefore, there is no reason why the evidence of PW6 should be discarded as a whole. His evidence supports defence version.

17. The evidence of PW7 has also not been considered in the right perspective. He gave a version for the first time in court that the bus was driven at over speed without sounding horn. He had no such case before the police. Though he stated that bus driver was negligent, his evidence cannot be given much weight because he could not say anything regarding the manner in which the autorickshaw was driven by PW8. The speed of a vehicle alone is not a criteria to decide the negligence and rashness in driving. When two vehicles hit there must be evidence to show the manner in which the other vehicle was driven.

18. PW7 deposed that he did not see how the autorickshaw was driven at the time of accident. He also could not say whether the accident occurred in the middle of the road. Though he stated that autorickshaw was coming from opposite side etc, in the light of the evidence that he did not see how the autorickshaw was driven, no weigh can be attached to the version given by PW7. His evidence on

relevant aspects was brought out as omission.

19. The evidence of PW8 was also not considered properly. In fact, to certain extent his version supports the case of the defence. PW8 is the autorickshaw driver who deposed that he had swerved the vehicle and that is why vehicle was hit. The report of Assistant Motor Vehicle Inspector Ext.P4 would show that damage was on the rear side of the autorickshaw on its right side whereas damage on the bus was on the front right side. Therefore, the possibility of autorickshaw swerving to the left and the chair hitting against the front right side of bus cannot be ruled out.

20. The fact that damage was on the right rear side of autorickshaw probabilizes the defence version, especially since the other evidence also would support that such a manner the accident could have occurred. In the above circumstances, the finding of trial court that the evidence of PWs 1, 2, 3, 4, 7 and 8 established the prosecution case cannot be accepted, since it contradicts the prosecution case. The finding of both the courts below that the defence version is not probabilized by the evidence in this case also is not correct. The courts have ignored various facts and circumstances which speak for themselves. Those would indicate that the accident did not occur because of the rash and negligent driving of bus by petitioner.

Hence, the conviction and sentence passed against the revision petitioner are set aside. He is found not guilty and is acquitted of offence under Sections 279 and 337 of IPC. He is set at liberty forthwith.

This revision petition is allowed.

K. HEMA, JUDGE

smp